IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 153 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BHARVAD RAMA CHANA

Appearance:

1. Criminal Appeal No. 153 of 1986

MR ND GOHIL,APP for Petitioner No. 1

MR MY RADHANPURAWALA for MR SHAKEEL A QURESHI for Respondent No. 1-7

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 12/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

1. The State of Gujarat, in this appeal under section 378 of the Code of Criminal Procedure, has challenged the judgment and order dated 30.10.985 passed in Sessions Case No. 17 of 1985 by the learned Addl. Sessions Judge, Rajkot. By the said judgment, the learned Sessions Judge acquitted the respondents accused of the offences punishable under sections 302, 147, 148, 149 of IPC and section 25(1)(a) of the Arms Act and section 37(1) read with section 135 of the Bombay Police Act.

2. The facts of the prosecution case, in nutshell, can be stated as under:

The deceased Hamir Vala serving as a Peon in the Office of Collector, Rajkot was residing in village Sardhar and was commuting daily from Sardhar to Rajkot. On 22.3.1985, he started from Sardhar to attend his duties and came to ST Bus Stand at about 10.30 a.m. The complainant Punabhai Mansurbhai had gone to the Wadi of Devabhai Naranbhai at about 9.00 a.m. for getting Rachka for his cattle. However, since he did not get Rachka as Devabhai Naranbhai was not present in the house, he sat on the wall of culvert facing towards village Sardhar and while he was so sitting, he saw the deceased proceeding towards ST stand. It is the prosecution case that Puna Mansur inquired from the deceased as to where the deceased was going. The deceased informed him that he was going to Rajkot in order to attend his duty. When the deceased was standing at the ST Bus Stand, A1 to A4 came from the side at which the cabin of one Darbar is situated. A4 fired a shot from tamancha at the deceased. The deceased ran towards Bhamariya Wadi through the road situated in front of Welding shop of one Vyas. The accused no.3 gave a dharia blow to deceased on his left neck while the deceased was running. The deceased fell down. A1 and A2 gave knife blows to the deceased after the deceased fell down on the ground while A5 to A7 came from the side in which Vandi of Makanpur is situated and they started giving blows with stones to the deceased on head. The deceased Hamir Vala died there and there. Police Constable Narendragiri, PW 5 of Sardhar Outpost who was on patrolling duty, came to the spot and found number of injuries on the deceased. The complainant Puna Mansur narrated the incident to Police Constable Narendragiri who thereafter went to Sardhar Outpost and informed about the incident to Head Constable Jaisinh Chauhan. Head Constable Jaisinh Chauhan asked Narendragiri to go to Rajkot Taluka Police Station and

inform the PSO Incharge about the incident. Accordingly PC Narendragiri went to Rajkot Taluka Police Station at about 11.00 a.m. and informed Police Inspector Bihola about the incident. Police Inspector Bihola made necessary entries in the police station diary about the information conveyed to him. PI Bihola and PC Narendragiri thereafter came to village Sardhar and started usual investigation. After due and necessary investigation, chargesheet against the accused was submitted.

3. The charge Ex.1 was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

4. The defence of the accused was of total denial. According to them, they are falsely involved in the case at the instance of complainant Puna Mansur and other prosecution witnesses.

5. After considering and appreciating the evidence on record, the learned Trial Judge was of the view that the prosecution has failed to establish guilt of the accused beyond reasonable doubt. The trial court was of the view that there was ample room for doubt and, therefore, the benefit of the same must be given to the accused. He accordingly acquitted all the accused of the offences for which they were charged. Hence this appeal.

6. We have heard Mr. N.D.Gohil, learned APP for the State and Mr.M.Y.Radhanpurwala, learned advocate who appears for Mr. Kureshi for the respondents accused, at length. We have also gone through the entire evidence on record.

7. Learned APP Mr. Gohil submitted that the trial court has committed an error in not accepting the evidence of the complainant Puna Mansur duly corroborated by the medical evidence and the evidence of PC Narendragiri. In the submission of learned APP, the evidence of complainant is reliable and trustworthy and conviction can be based on the sole evidence of the complainant. Mr. Radhanpurwala, on the other hand, has supported the judgment of the trial court in toto.

8. For the purpose of proving homicidal death of deceased Hamirbhai, the prosecution has relied on the evidence of Dr. Mukundrai Kantibhai, Medical Officer of Civil Hospital, Rajkot at Ex.17. Dr.Mukundrai who performed postmortem examination of the deceased found as many as 20 injuries. According to the doctor, cause of

death of the deceased was shock due to haemorrhage from major blood vessel of neck on account of injuries to the neck. According to him, the injuries which were caused to the deceased were sufficient in the ordinary course of nature to cause death. He has further stated that external injury no. 7 was sufficient to cause death in the ordinary course of nature which is possible by blunt portion of dharia. Thus, from the medical evidence on record, we are of the view that the prosecution has succeeded in proving that the deceased met with homicidal death. In fact, learned advocates appearing for the parties have not disputed this aspect of the matter.

9. Regarding the part played by each accused in the commission of offence, the prosecution has mainly relied upon the evidence of the complainant Puna Mansur and Hamirbhai Hirabhai who are the eye witnesses. Since Hamirbhai Hirabhai had not supported the prosecution, he was declared hostile. The entire case of the prosecution, therefore, rests on the evidence of the complainant.

10. According to the prosecution, the father of the deceased Valabhai was murdered two years before the present incident. It appears that 15 Darbars of village Sardhar were prosecuted for committing murder of Valabhai. Thus, according to the prosecution, there were two fractions between the villagers, one of Harijans and another of Darbar community people. According to the prosecution case, murder of Hamir Vala was the result of that enmity. Considering this aspect, the trial court, in our opinion, has rightly held that the prosecution has succeeded in proving motive behind committing murder of the deceased, from the evidence of the complainant Puna Mansur.

11. As far as the evidence of eye witness Puna Mansur is concerned, he has tried to involve all the accused in the commission of offence. According to him, on the date of the incident, at about 9.00 a.m., he had gone to Wadi of Devabhai Naranbhai to get Rachka for his cattle. As Devabhai Naranbhai was not present there, he was asked to come to take Rachka when Devabhai came. He thereafter sat on the culvert situated near bus stand of village Sardhar. He sat on the wall of the culvert which is near village Sardhar. At about 10.30 a.m., Hamir Vala came to the bus stand. He inquired from Hamir Vala as to where he was going to which Hamir Vala replied that he was going to Rajkot to attend duty. According to him, when Hamir was standing near the bus stand, A1 to A4 came from the side in which cabin of Darbar is situated. According

to him, A4 and A5 fired tamancha on Hamir Vala. Hamir Vala went towards Bhamariya Vadi situated towards the shop of one Vyas. According to this witness, A3 gave blow with dharia on the left neck of Hamir as a result of which, Hamir fell down on the ground. Thereafter A2 gave blows with knife. He has deposed that at that time, A5 to A7 came from the side in which Vandi of Makanpur road is situated and they started giving blows with stones on the head of Hamir. According to this witness, the deceased died instantaneously. Even though he had requested the accused not to assault, the accused did not listen him. He has further deposed that PC Narendragiri came to the place of the incident to whom he narrated the entire incident. He lodged complaint before Police Inspector Rajkot Taluka Police Station. In the cross examination of this witness, the defence has brought out many important contradictions.

12. Admittedly, this witness Puna Mansur is the close relative of deceased Hamir. He is the cousin brother of father of the deceased. In short, he is the uncle of deceased Hamir. On careful scrutiny of the evidence of this witness, we have no hesitation to hold that he is a chance witness and his presence near the place of the incident at the time of incident is doubtful. He has claimed to have reached the spot just at the time when the deceased was attacked by the accused. This witness claimed that he saw the incident when he was sitting on the wall of the culvert which is towards village Sardhar.

13. Ramniklal V.Trivedi, PW 1, Circle Inspector is examined by the prosecution. He has prepared the map of the scene of offence at Ex. 15. He, in his evidence, has stated that if a person is sitting on the wall of the culvert facing village Sardhar, he cannot witness the incident which takes places near ST Bus Stand. As per the prosecution case, A4 and A5 shot from tamancha when the deceased was near the bus stand. The deceased thereafter ran from ST stand upto the Vandi of Makanpura covering distance of about 600 feet where he was assaulted by the accused. From the map Ex. 15, it appears that the culvert is at a distance of about 140 feet from the ST stand. Thus, when it is not possible for the complainant to witness the first incident at ST bus stand, he could not have reached the second spot along with deceased and seen beating part and the deceased having succumbed to injuries. Admittedly, no cartridges were found from the place situated near the bus stand.

14. Even though the complainant claims to have

informed PC Narendragiri about the incident, the name of Narendragiri does not find place in the complaint given by the complainant and recorded by the Police Inspector Bihola. The conduct of the complainant of not intervening when his own nephew was attacked by the assailants and not even informing the relatives of the deceased about the incident, in our opinion, raises a doubt about his presence at the time of the incident. The learned Trial Judge, in our opinion, rightly discarded the evidence of Puna Mansur by holding that he is a close relative of the deceased and being a chance witness and having made much improvement in his evidence on material points, it is not safe to rely on his evidence. After closely scrutinising his evidence, we are also of the opinion that his evidence does not inspire confidence and he cannot be regarded as a truthful witness and, therefore, it is not safe to rely on his evidence especially when the accused are charged with serious offence of murder.

15. We have gone through the evidence of Hamir Hira who is examined at Ex. 21. He has not supported the prosecution and has been declared hostile. Even from his cross examination, nothing material is brought out which will help the prosecution.

16. On examining the evidence of Police Constable Narendragiri at Ex. 22, we are of the opinion that he has also not helped the prosecution. As observed earlier, his presence at the scene of offence immediately after the incident is doubtful inasmuch as his name is not mentioned in the complaint filed by the complainant Puna Mansur. It further appears that the entry at Ex. 23 in patrolling book is alleged to have been made by PC Narendragiri subsequently. According to this witness, he had informed Head Constable Jaisinh Chauhan about the incident. If that is so, Head Constable Jaisinh Chauhan of Sardhar Outpost would not have failed to prepare the Occurrence Report. Admittedly, no Occurrence Report in respect of the incident is prepared by Head Constable Jaisinh Chauhan. No plausible explanation is forthcoming by PC Narendragiri for not recording complaint of Puna Mansur when he had specifically informed PC Narendragiri that the accused had committed murder of Hamir Vala, in our opinion, makes his evidence unreliable.

17. Maluben, widow of deceased Hamir Vala at Ex. 24, Govindbhai Valabhai Ex. 25, Chiman Budhabhai Ex. 26, Vrajlal Jadavji Ex. 27, Chakubhai Mohanbhai Ex. 28 and Vinodbhai Mohanlal Ex.29 have been examined by the prosecution as supporting witnesses. However, none have

supported the prosecution case and were declared hostile. After having gone through their evidence, we are of the view that nothing has been stated by them in their evidence which could support the prosecution case. Similarly, panchas to prove various panchnamas, have also not supported the prosecution.

18. Taking abovestated facts into consideration, in our opinion, the learned Trial Judge was perfectly justified in acquitting all the accused of the offences of which they were charged. Suffice it to say that we are in total agreement with the reasonings and the ultimate conclusion recorded by the learned Trial Judge.

There being no substance in this appeal, the same is dismissed. Bail-bonds stand cancelled.

(Kshitij R.Vyas,J.)

(K.M.Mehta,J.)

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